(214)

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No.04/2007

PETITIONER Dainik Nav Bharat,
Through its Printer and Publisher
Dainik Nav Bharat Press,
Bus Stand Road, Bilaspur (C.G.)

Versus

RESPONDENTS

1. Akhil Pandey, S/o Sri Manmohan Lal Pandey, aged about 41 years, R/o High Court Road, Bilaspur, Tahsil & District Bilaspur (C.G.)
2. Presiding Officer, Labour Court, Bilaspur, District Bilaspur (C.G.)

Writ Petition under Article 226 of the Constitution of India

Appearance:

Shri N.K. Vyas, counsel for the petitioner.
Shri Ashish Shrivastava, Counsel for respondent No.1.

ORAL ORDER

(22.08.2007)

SUNIL KUMAR SINHA, J,

Heard both the counsel.

The brief facts are that respondent No.1 raised an industrial dispute before the appropriate government, from where; the same was referred to the Labour Court, Bilaspur for adjudication under Industrial Disputes Act. The reference was registered as Case No.8/IDA/02. The Labour Court issued notice on 14/3/2002 for appearance of the parties. The petitioner caused its appearance and filed written submission on 14/6/2002 through their counsel Shri Ram Lochan Sharma, who represented the petitioner on subsequent dates also. On 26.8.2002, the case was fixed for 5.9.2002 for evidence of respondent No.1. On 5.9.2002, the petitioner could not be represented on account of death of its counsel namely Shri Ram Lochan Sharma on 25/7/2002 in a road accident and the petitioner was not aware about the said date of hearing. In such a situation, the Labour Court proceeded ex-parte against the petitioner. In consequence, respondent No.1 examined himself

and closed the evidence and ultimately, ex-parte award dated 11.9.2002 was passed by the Labour court directing the petitioner to reinstate respondent with full back wages. Thereafter, the petitioner filed an application for setting aside the ex-parte award on 10.10.2002 on the ground that due to death of its Advocate on 25/7/2002, the petitioner could not participate in the proceedings. The Labour Court rejected the said application vide its order dated 02.01.2003.

The aforesaid order was challenged before the High Court in Writ Petition No.887/2003, which was disposed of by order dated 23.8.2006. This Court while setting aside the order passed by Labour Court remanded the matter to the Labour Court for deciding the application dated 10.10.2002, filed by the petitioner for setting aside the ex-parte award dated 11.9.2002, in accordance with law. In consequence of the said order passed by this Court, the matter was again taken up by the Labour Court and ultimately, by impugned order dated 16.11.2006; the Labour Court again rejected the petition for setting aside the ex-parte award. It is against this order passed by the Labour Court on 16.11.2006; the petitioner has filed this Writ Petition before this Court.

Learned counsel for the petitioner submits that the petitioner has given sufficient cause for its non-appearance in the later part of proceedings and the application filed by the petitioner dated 10/10/2002 should have been allowed by the Labour Court and an opportunity of hearing should have been granted in favour of the petitioner. He also submits that the petitioner had complied the provisions of Section 17-B of the I.D. Act and they are regularly paying Rs.3000/- per month to respondent No.1. He submits that if there is any casual default in such payment, the payment shall be made up to date.

On the other hand, learned counsel for respondent No.1 opposes these arguments. He supports the order passed by the Labour Court.

I have heard learned counsel for the parties at length and have also perused the paper book filed in this case.

Admittedly, after issuance of notice, a written statement was filed by the petitioner in this case and Counsel for the petitioner namely Shri Ram Lochan Sharma was appearing for the petitioner, who caused his appearance on dates of hearing prior to 25/7/2002 as on the said date; he died in a road accident. It is for this reason, on 5/9/2002, he could not appear before the Labour Court and ultimately, the Labour Court proceeded ex-parte and pronounced the award dated 11.9.2002. The Labour Court has held that since the averments to this effect are not made in the application and affidavit of the petitioner that they were said by their counsel to not appear before the Labour Court and the dates of hearing were being informed to them and due to death of counsel they could not be informed further date of hearing, it cannot be held that the petitioner was having no knowledge about the date of hearing, therefore, it could not make its representation before the Labour Court on the said date. The Labour Court has further held that since the petitioner could not show sufficient cause for its non-appearance on the date of hearing, therefore, it was not a case, in which, ex-parte proceedings drawn against the petitioner should be set aside and accordingly, it has dismissed the petition.

In the matter of **Lal Devi and another vs. Vaneeta Jain and others, 2007 AIR SCW 3387** the Apex Court held that where the counsel engaged by the defendant did not appear before the Court on the day fixed for hearing nor represented to the Court about their absence, the Court decided to proceed ex parte and examined the witnesses present in the Court and heard the arguments and reserved its judgment to be pronounced later in the day, the ex parte order passed by the Court after rejecting the application for recall of the order to pronounce the ex parte judgment, was liable to be set aside. In such a case, though counsel of the defendant were not careful enough to inform the Court about their pre occupation before the High Court which prevented them from being present in his Court when the case was called for hearing. But the passing of

217

an ex parte decree in a case of this nature would be too harsh a consequence to be upheld. The defendant could not be made to suffer an ex parte decree particularly when he was not at fault, having duly instructed his counsel to appear before the Court. Further though the District Judge could not entertain an application under O.9 R. 7 CPC, and even the application under O.9, R.13 was dismissed as not pressed. But nothing prevented the High Court from setting aside the ex parte decree in the appeal preferred against it.

In the present case, it is not disputed before me that the counsel for the petitioner has expired on 25/7/2002 and till the said date, he was regularly attending the Court on behalf of the petitioner and it is after this only, the petitioner remained unrepresented on 5/9/2002, thereafter, the Court proceeded ex-parte and passed the impugned award. That is to say that the counsel could not appear on account of his death and there is nothing to presume that the petitioner was having knowledge about the death of its counsel and it voluntarily did not turn up to the Court. The petitioner cannot be dealt with so harshly who appears to have duly instructed its counsel and the ex-parte proceedings drawn by the Labour Court does not appear to be reasonable. In fact, the petitioner has shown sufficient ground for its non-representation on the date of hearing.

In the facts and circumstances of this case, where the Counsel for the petitioner has expired, the Labour Court ought to have set aside the ex-parte award passed against the petitioner and with an intention to give full opportunity to the parties, it should have allowed the application of the petitioner filed for setting aside the ex-parte award, as on all times the parties are not to be given benefit of technicalities of law, rather the approach should be to decide the dispute finally, after giving full opportunity to all the concerned parties.

In view of the above, the petition is allowed.

The impugned order dated 16/11/2006 passed by the Labour Court is set aside. The application filed by the petitioner for setting aside the ex-parte award is allowed. In consequence,

the award dated 11.9.2002 is also set aside and the matter is remanded to the Labour Court for proceeding further in accordance with law in I.D. reference Case No. 8/IDA/02 from the stage it has proceeded ex-parte against the petitioner.

However, looking to the period undertaken in the proceedings, I deem it proper to impose a cost of Rs.1000/- against the petitioner, which shall be paid before the Labour Court to respondent No.1.

To avoid further delay, the parties are directed to appear before the Labour Court on **17th September 2007**.

Sd/-
Sunil Kumar Sinha
Judge

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